

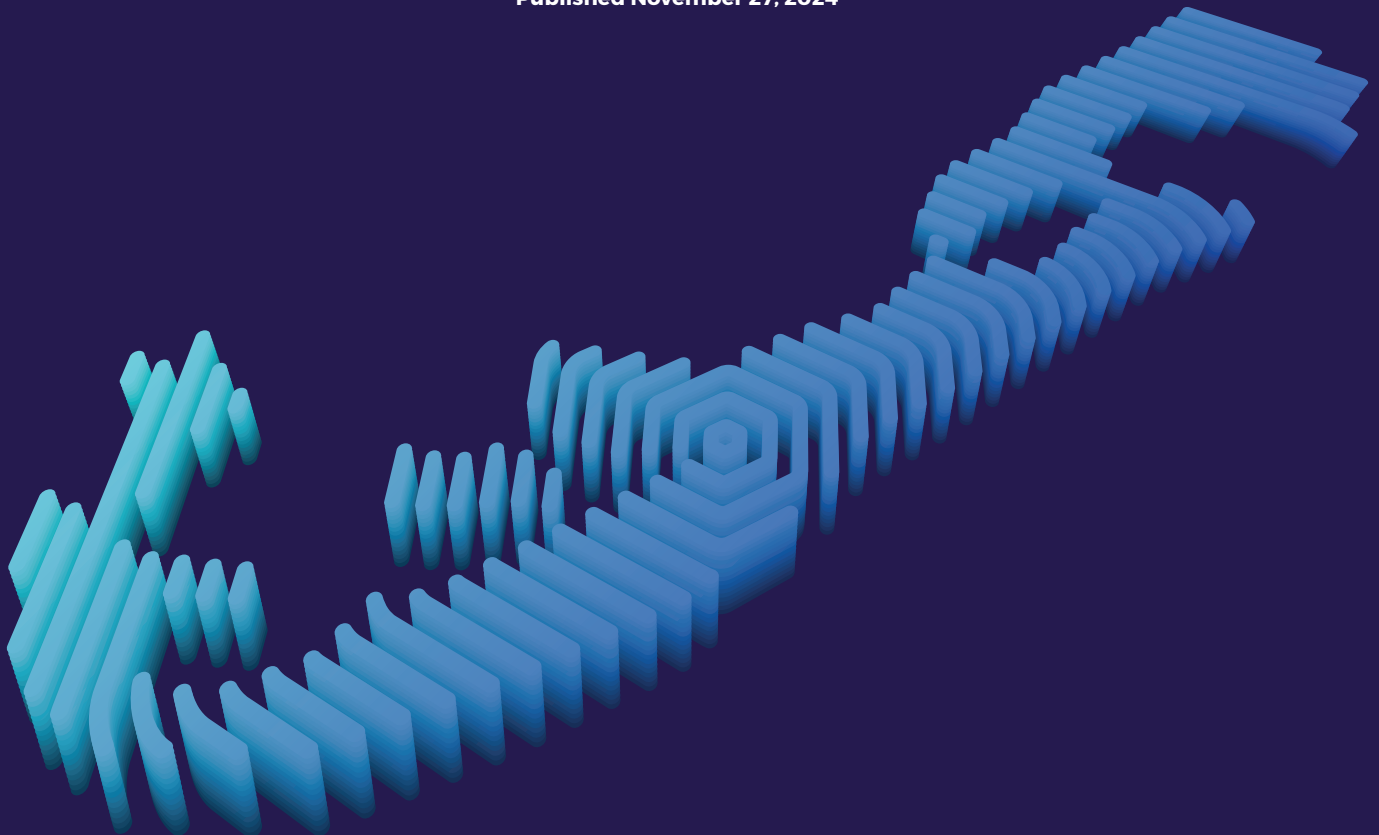


GOVERNMENT OF BERMUDA
Ministry of Finance

PUBLIC COMMUNICATION

Proposed Amendments **Company, Limited Liability Company and Partnership Laws**

Published November 27, 2024





**Government of Bermuda
Ministry of Finance**

Public Communication

**Administration of Corporate Income Tax Follow-up -
Company, Limited Liability Company and Partnership Laws
Proposed Amendments**

This Public Communication addresses certain proposed amendments to various corporate and partnership laws to facilitate the introduction of the administrative provisions relating to the Corporate Income Tax Act 2023 (“the Act”). This Communication also includes an illustrative draft of the proposed legislation at Appendix I together with a set of Instructions to be provided on the Registrar’s website to provide explanations of the terms involved and how the questions may be addressed at Appendix II.

Proposed Changes

The Act was enacted in December 2023. It provides that Bermuda Constituent Entity Groups, comprised of one or more Bermuda Constituent Entities (“BCE”) of an In Scope MNE Group, will be subject to the Bermuda corporate income tax with respect to fiscal years beginning on or after January 1, 2025.

Responses received in the First Public Consultation on the administration of the Act indicated a strong preference for simple administration. Consistent with the feedback, it is the intent of the Corporate Income Tax Agency to ensure BCEs are not subjected to extensive and unnecessary administrative burdens as they comply with the administration of the Act.

Therefore, it has been determined that the registration process will be incorporated into the annual filing of returns with the Registrar of Companies. As a result, certain corporate and partnership governance laws will require revision to aid the transition of the Act into Bermuda's current regulatory environment.

It is expected that the Acts that will require revision are the Companies Act 1981, the Limited Liability Company Act 2016, the Exempted Partnerships Act 1992 and the Overseas Partnership Act 1995 (collectively "the governance Acts").

Amendments to the legislation affecting local partnerships are not currently anticipated because, unlike exempted and overseas partnerships, there is not an obvious route to collect the relevant information from local partnerships. In any event the number of local partnerships expected to be in scope of CIT is small. For the avoidance of doubt, local partnerships who are within the scope of CIT will be required to register in the future, most likely through a separate process to be introduced by the Agency.

The governance Acts in Bermuda require certain information to be furnished to the Registrar by the entities and partnerships in question. Part of the information required by the Corporate Income Tax Agency is already provided annually to the Registrar. The revisions to the governance Acts seek to aid in the reduction of duplication of efforts required by BCEs for compliance measures.

Information required:

It is expected that entities will have to provide additional information during annual returns to the Registrar. Two new questions will be added to those already asked upon filing and declaration.

Bermuda Constituent Entity

The first question will be whether the entity is a BCE as defined in the Act. If the answer is “Yes”, then the entity proceeds to the second question below. If the answer is “No”, then the entity must say why, by selecting a response from a list provided. Guidance will be provided to explain the meaning of certain of the terms used in the responses, such as what it means to be an In Scope MNE Group, or a non-resident, and others.

Representative Entity

If the answer to the first question is “Yes”, (e.g. the entity is a BCE), it must then provide the name of a Bermuda tax resident entity which is to be the “representative entity”, together with contact information as specified. This entity will be the point of contact for the BCE. The entity completing the form may provide its own name as the representative entity.

Expected Revisions:

In light of the above, the following revisions are suggested to the corresponding governance Acts.

Companies Act 1981

Sections related to the filing of an annual declaration will be revised to include a statement as to whether the company is a BCE for purposes of the Act and, if so, the name of the representative entity and its contact information. The changes will cover the sections relevant to the return of shareholdings for local companies, the annual fees and declaration for exempted companies and the corresponding provisions for overseas companies.

A further amendment will provide reassurance that information provided as a result of these amendments will not be publicly available.

To the extent companies have already completed the filing procedure at the time of enactment of the proposed amendments, a further filing may be required to the Registrar without penalty.

Limited Liability Company Act 2016

The section related to a return of holdings of limited liability company interests will be revised to include an indication as to whether the local limited liability company is a BCE for purposes of the Act and, if so, the name of the representative entity and its contact information.

Corresponding amendments will be made to the sections dealing with the certificate of formation and the submission of the annual declaration.

A further amendment will provide reassurance that information provided as a result of these amendments will not be publicly available.

To the extent limited liability companies have already completed the filing procedure at the time of enactment of the proposed amendments, a further filing may be required by the Registrar without penalty.

Exempted Partnerships Act 1992

Sections related to the submission of an annual declaration will be revised to include a statement as to whether the partnership is (or will be on commencement) a BCE for purposes of the Act and, if so, the name of the representative entity and its contact information.

A further amendment will provide reassurance that information provided as a result of these amendments will not be publicly available.

To the extent partnerships have already completed the filing procedure at the time of enactment of the proposed amendments, a further filing may be required by the Registrar without penalty.

Overseas Partnerships Act 1995

Sections related to the submission of fees will be revised to require a statement as to whether the overseas partnership is (or will be on commencement) a BCE for purposes of the Act and, if so, the name of the representative entity and its contact information.

A further amendment will provide reassurance that information provided as a result of these amendments will not be publicly available.

To the extent partnerships have already completed the filing procedure at the time of enactment of the proposed amendments, a further filing may be required by the Registrar without penalty.

Corresponding Changes to the Online Register:

Following the implementation of the above statutory changes, amendments will be made to the Registrar of Companies' Online Register for the purposes of the various declarations and filings. In particular, where an entity has responded to the question about whether or not it is or will be a BCE by saying "no", the system will require the entity to identify one of the various possible reasons why it is not a BCE.

The options for selection are as follows:

- (a) The entity is not a member of an In-Scope Multinational Enterprise;
- (b) The entity is a Bermuda entity but is not resident in Bermuda and does not have a Bermuda Permanent Establishment
- (c) The entity is not a Bermuda entity and does not have a Bermuda Permanent Establishment
- (d) The entity is not a member of a group within the limited international footprint exception

- (e) The entity is an excluded entity as defined in the law
- (f) The entity is less than 80% owned by its ultimate parent and has not elected to be included within the taxable group
- (g) The entity is an incorporated segregated account which has made an election under the law to be treated as a separately taxable entity

Other Administrative Matters

It is intended that information on other administrative matters will be provided early in the first quarter of 2025, but it should be noted that, at this time, no significant changes are expected to the proposals relating to tax deposits and filings, as outlined in the previous consultation paper.

Conclusion

Addressing the registration process in this way meets the request from industry for simplicity and elimination of unnecessary duplication in the process. This will appropriately complete the key requirements for the Act to be brought into force on January 1, 2025.

Appendix I

COMPANIES, LIMITED LIABILITY COMPANY AND PARTNERSHIP AMENDMENT ACT

2024

(ILLUSTRATIVE DRAFT)

BR [XX] / 2024

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- 1 Citation
- 2 Amends the Companies Act 1981
- 3 Amends the Limited Liability Company Act 2016
- 4 Amends the Exempted Partnerships Act 1992
- 5 Amends the Overseas Partnerships Act 1995

WHEREAS it is expedient to amend the Companies Act 1981, the Limited Liability Company Act 2016, the Exempted Partnerships Act 1992 and the Overseas Partnerships Act 1995 to provide for the registration of certain entities under Bermuda's corporate income tax regime;

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Assembly of Bermuda, and by the authority of the same as follows:

Citation

- 1 This Act may be cited as the Companies, Limited Liability Company and Partnership Amendment Act 2024.

Amends the Companies Act 1981

2 (1) This section amends the Companies Act 1981.

(2) In section 2 (Interpretation), subsection (1) insert the following additional definitions in the correct alphabetical order-

- (a) ‘ “Bermuda Constituent Entity” has the meaning given to that term in the CIT Act’;
- (b) ‘ “CIT Act” means the Corporate Income Tax Act 2023; and
- (c) ‘ “CIT Agency” means the Corporate Income Tax Agency established pursuant to the Corporate Income Tax Agency Act 2024’.

(3) Insert a new section 5B after the current section 5A as follows-

“Every company to which this Act applies shall provide to the Registrar on its application for incorporation or registration (in such form as the Registrar may determine) information as to whether or not the company shall, upon its incorporation or registration, be a Bermuda Constituent Entity (following commencement of the CIT Act) and, if a Bermuda Constituent Entity, details of its representative entity in Bermuda for these purposes, provided that information submitted pursuant to this section 5B shall not be publicly available, but may be shared by the Registrar with the CIT Agency.”

(4) In section 117 (Return of shareholdings)-

- (a) in subsection (3)(a), insert a new sub-paragraph (vi) as follows: “a statement of whether or not the company is (or will be upon the commencement of the CIT Act) a Bermuda Constituent Entity and, if a Bermuda Constituent Entity, details of its representative entity in Bermuda for these purposes.”;

- (b) Insert a new subsection (6) as follows: “Information submitted pursuant to subsection 3(a)(vi) shall not be publicly available, provided that the Registrar may share this information with the CIT Agency.”; and
- (c) Insert a new subsection (7) as follows: “Where the Registrar has received a return of shareholding that does not contain the information required pursuant to subsection (3)(a), he may require the re-submission of an additional return of shareholdings that shall include the omitted information, notwithstanding the original return of shareholdings was filed prior to [the commencement date of this Act] but provided that where such original return of shareholdings was submitted prior to [the commencement date of this Act], such omission shall not constitute an offence”.

(5) In section 131 (Annual fees),-

- (a) in subsection 1(a), insertion a new paragraph (ib) after the current (ia) as follows “stating whether or not the company is (or will be upon the commencement of the CIT Act) a Bermuda Constituent Entity and, if a Bermuda Constituent Entity, details of its representative entity in Bermuda for these purposes.”;
- (b) Insert a new subsection (8) as follows: “Information submitted pursuant to subsection 1(a)(ib) shall not be publicly available, provided that the Registrar may share this information with the CIT Agency.”; and
- (c) Insert a new subsection (9) as follows: “Where the Registrar has received a declaration that does not contain the information required pursuant to subsection 1(a)(ib), he may require the re-submission of an additional declaration that shall include the omitted information, notwithstanding the original return of shareholdings was filed prior to [the commencement date of this Act] but provided that where such original declaration was submitted prior to [the commencement date of this Act], such omission shall not constitute an offence.”

(6) In section 135 (Annual fees)-

- (a) in subsection 2A insertion a new paragraph (d) as follows “stating whether or not the permit company is (or will be upon the commencement of the CIT Act) a Bermuda Constituent Entity and, if a Bermuda Constituent Entity, details of its representative entity in Bermuda for these purposes.”; and
- (b) in subsection 3, delete “and” between “(5) and (6)” and add the following words after “(6)”: “,(8) and (9)”.

Amends the Limited Liability Company Act 2016

3 (1) This section amends the Limited Liability Company Act 2016.

(2) In section 2 (Interpretation), insert the following additional definitions in the correct alphabetical order-

- (a) ‘ “Bermuda Constituent Entity” has the meaning given to that term in the CIT Act’;
- (b) ‘ “CIT Act” means the Corporate Income Tax Act 2023; and
- (c) ‘ “CIT Agency” means the Corporate Income Tax Agency established pursuant to the Corporate Income Tax Agency Act 2024’.

(3) In section 17 (Return of holdings of LLC interests)-

- (a) in subsection (4)(a), insert a new sub-paragraph (vi) as follows: “a statement whether or not the local LLC is (or will be upon the commencement of the CIT Act) a Bermuda Constituent Entity and, if a Bermuda Constituent Entity, details of its representative entity in Bermuda for these purposes.”;

- (b) Insert a new subsection (7) as follows: “Information submitted pursuant to subsection 4(a)(vi) shall not be publicly available, provided that the Registrar may share this information with the CIT Agency.”; and
- (c) Insert a new subsection (8) as follows: “Where the Registrar has received a return of holdings of LLC interests that does not contain the information required pursuant to subsection (4)(a), he may require the re-submission of an additional return of holdings of LLC interests that shall include the omitted information, notwithstanding the original return of holdings of LLC interests was filed prior to [the commencement date of this Act] but provided that where such original return of holdings of LLC interests was submitted prior to [the commencement date of this Act], such omission shall not constitute an offence”.

(4) In section 30 (Certificate of Formation)-

- (a) in subsection 1, insert the following words at the end of such sub-section: “and a statement whether or not the limited liability company is (or will be upon the commencement of the CIT Act) a Bermuda Constituent Entity and, if a Bermuda Constituent Entity, details of its representative entity in Bermuda for these purposes.”; and
- (b) Insert a new subsection (8) as follows: “Information submitted pursuant to subsection 1 regarding whether or not the limited liability company is a Bermuda Constituent Entity shall not be publicly available, provided that the Registrar may share this information with the CIT Agency.”

(4) In section 254 (Submission of annual declaration)-

- (a) insert a new subsection 1A after the current subsection 1 as follows: “A declaration submitted pursuant to this section must also include a statement whether or not the limited liability company is (or will be upon the commencement of the CIT Act) a Bermuda Constituent Entity and, if a

Bermuda Constituent Entity, details of its representative entity in Bermuda for these purposes.”;

- (b) Insert a new subsection (3) as follows: “Information submitted pursuant to subsection (1A) shall not be publicly available, provided that the Registrar may share this information with the CIT Agency.”; and
- (c) Insert a new subsection (4) as follows: “Where the Registrar has received a declaration that does not contain the information required pursuant to subsection (1A), he may require the re-submission of an additional declaration that shall include the omitted information, notwithstanding the original declaration was filed prior to [the commencement date of this Act] but provided that where such original declaration was submitted prior to [the commencement date of this Act], such omission shall not constitute an offence”.

Amends the Exempted Partnerships Act 1992

4 (1) This section amends the Exempted Partnerships Act 1992.

(2) In section 2 (Interpretation), subsection (1) insert the following additional definitions in the correct alphabetical order-

- (a) ‘ “Bermuda Constituent Entity” has the meaning given to that term in the CIT Act’;
- (b) ‘ “CIT Act” means the Corporate Income Tax Act 2023; and
- (c) ‘ “CIT Agency” means the Corporate Income Tax Agency established pursuant to the Corporate Income Tax Agency Act 2024’.

(3) In section 12 (Submission of declaration)-

- (a) insert a new subsection 1A after the current subsection 1 as follows: “A declaration submitted pursuant to this section must also include a statement whether or not the partnership is (or will be upon the commencement of the CIT Act) a Bermuda Constituent Entity and, if a Bermuda Constituent Entity, details of its representative entity in Bermuda for these purposes.”;
- (b) Insert a new subsection (3) as follows: “Information submitted pursuant to subsection (1A) shall not be publicly available, provided that the Registrar may share this information with the CIT Agency.”; and
- (c) Insert a new subsection (4) as follows: “Where the Registrar has received a declaration that does not contain the information required pursuant to subsection (1A), he may require the re-submission of an additional declaration that shall include the omitted information, notwithstanding the original declaration was filed prior to [the commencement date of this Act] but provided that where such original declaration was submitted prior to [the commencement date of this Act], such omission shall not constitute an offence”.

Amends the Overseas Partnerships Act 1995

5 (1) This section amends the Overseas Partnerships Act 1995.

(2) In section 2 (Interpretation), subsection (1) insert the following additional definitions in the correct alphabetical order-

- (a) ‘ “Bermuda Constituent Entity” has the meaning given to that term in the CIT Act’;
- (b) ‘ “CIT Act” means the Corporate Income Tax Act 2023; and
- (c) ‘ “CIT Agency” means the Corporate Income Tax Agency established pursuant to the Corporate Income Tax Agency Act 2024’.

(3) In section 23 (Fees)-

- (a) insert a new subsection 2C after the current subsection 2B as follows: “Every overseas partnership to which this section applies shall at the time of paying its fees in accordance with subsection (2) (a) and (b) also file with the Registrar a statement of whether or not the overseas partnership is (or will be upon the commencement of the CIT Act) a Bermuda Constituent Entity and, if a Bermuda Constituent Entity, details of its representative entity in Bermuda for these purposes.”;
- (b) Insert a new subsection (8) as follows: “Information submitted pursuant to subsection (2C) shall not be publicly available, provided that the Registrar may share this information with the CIT Agency.”; and
- (c) Insert a new subsection (9) as follows: “Where the Registrar has received a statement that does not contain the information required pursuant to subsection (2C), he may require the re-submission of an additional statement that shall include the omitted information, notwithstanding the original statement was filed prior to [the commencement date of this Act] but provided that where such original statement was submitted prior to [the commencement date of this Act], such omission shall not constitute an offence”.

APPENDIX II

INSTRUCTIONS

Changes to Annual Declarations for all Entities

Companies, Permit Companies, LLCs, Exempted Partnerships, Exempted Limited Partnerships, and Overseas Partnerships are required to provide information which is relevant to the administration of the Corporate Income Tax Act, 2023 ("CIT Act").

In order to facilitate the collection of this information the annual declaration forms have been amended.

Following are specific instructions and guidance relevant to the completion of the questions in the annual declaration related to the CIT Act. Except as noted below, all terms shall have the meaning prescribed in the CIT Act and all section references are to the CIT Act.

Q1: Is the entity a Bermuda Constituent Entity during the relevant fiscal year?

This is a threshold scoping question intended to identify entities which will be subject to the CIT Act.

- An entity which does not meet the requirements to be treated as a Bermuda Constituent Entity would not be subject to Bermuda corporate income tax during the fiscal year and would select a response of "No" to Q1, following which the entity will be directed to provide the information requested in Q2 below.

- An entity which meets the requirements to be treated as a Bermuda Constituent Entity would be subject to Bermuda corporate income tax during the fiscal year and would select a response of "Yes" to Q1, following which the entity will be directed to provide the information requested in Q3 below.

Specific technical provisions in the CIT Act which may be required to determine whether an entity meets the requirements to be treated as a Bermuda Constituent Entity are summarized in further detail below.

Relevant Fiscal Year

For purposes of responding to Q1 and Q2, the “relevant fiscal year” shall be the entity’s fiscal year which begins in the calendar year in which the annual declaration in question is due. The term “fiscal year” refers to the accounting period with respect to which the ultimate parent entity of the MNE Group prepares its consolidated financial statements.

Example 1 *Entity A has a fiscal year which begins January 1 and ends December 31 and is filing an annual declaration which is due by January 31, 2025.*

Entity A will respond to Q1 based on whether it will be a Bermuda Constituent Entity during its fiscal year beginning January 1, 2025, (i.e. the fiscal year which begins in the calendar year, 2025, in which this annual declaration is due).

Example 2 *Entity B has a fiscal year which begins April 1 and ends March 31 and is filing an annual declaration which is due by January 31, 2025.*

Entity B will respond to Q1 based on whether it will be a Bermuda Constituent Entity during its fiscal year beginning April 1, 2025 (i.e. the fiscal year which begins in the calendar year (2025) in which this annual declaration is due).

Q2: Select a reason why the entity will not meet the requirements to be treated as a Bermuda Constituent Entity during the fiscal year.

Q2 is required to be completed by entities which have selected a response of “No” to Q1. An entity completes Q2 by selecting one of the options a. through g. summarized below.

An entity may be described by more than one of the listed options. In this circumstance, any one of the options which are applicable to the entity may be selected.

a. Entity is not a constituent entity of an MNE group which had annual revenue of more than EUR 750 million during the fiscal year

As a general matter, an entity will not be treated as a Bermuda Constituent Entity unless both of the following requirements are met for a fiscal year:

- The entity is a member of a multinational group of entities (“MNE group”).
- The MNE group reported annual revenue of at least EUR 750 million in its consolidated financial statements for at least two of the four immediately preceding fiscal years.

In many cases, this general principal may be the simplest manner for identifying an entity that does not meet the requirements to be treated as a Bermuda Constituent Entity (e.g. where the entity is not a member of an MNE group, or the MNE group of which the entity is a member has not met the revenue threshold).

b. Entity is incorporated, formed, or organized in Bermuda but is not a Bermuda Tax Resident Entity and does not have a Bermuda Permanent Establishment

An entity that is incorporated, formed or organised in Bermuda and which:

- does not meet the requirements to be treated as a Bermuda Tax Resident Entity (i.e. due to the fact the entity is tax resident in another jurisdiction under the laws of that jurisdiction based on its location of management and control), and
- does not have a Bermuda Permanent Establishment,

will not be treated as a Bermuda Constituent Entity.

c. Entity is incorporated, formed, or organized in a foreign jurisdiction and does not have a Bermuda Permanent Establishment

A non-Bermuda entity (e.g. Permit Company, Overseas Partnership) will only answer “Yes” to Q1 to the extent it is the main entity of a Bermuda Permanent Establishment.

d. Entity qualifies for the limited international footprint provisions of the CIT Act

An MNE Group which is comprised of constituent entities located in six or fewer jurisdictions and which meets certain other criteria described in section 13 may be regarded as out of scope of the CIT Act for certain periods.

e. Entity is an excluded entity as defined in the CIT Act

Section 10 describes various “excluded entity” types. An entity which meets the requirements to be treated as an excluded entity and has not elected to be treated as a non-excluded entity under section 10(3) shall not be treated as a Bermuda Constituent Entity.

f. Entity is less than 80% owned by the ultimate parent entity and has not made an election pursuant to section 9(3) of the CIT Act

An entity that is less than 80% owned (by value), directly or indirectly, by the ultimate parent entity of its In Scope MNE Group shall not be treated as a Bermuda Constituent Entity unless it elects to be treated as a Bermuda Constituent Entity pursuant to section 9(3).

g. Entity is an incorporated segregated account which has made an election pursuant to section 15(6)(b) of the CIT Act

An incorporated segregated account is generally treated as a separate entity for purposes of the CIT Act. However, an incorporated segregated account may elect pursuant to section 15(6)(b) to not be treated as a separate entity from its incorporated segregated

account company. To the extent such an election is made, the incorporated segregated account would not be treated as a separate Bermuda Constituent Entity.

Q3: Information with respect to the entity’s Representative BCE.

An entity that responded “Yes” to Q1 will need to provide additional information with respect to a representative Bermuda Constituent Entity (“Representative BCE”). This information is requested as a means of identifying all Bermuda Constituent Entities which are members of the same MNE Group.

Key requirements relevant to the designation of the Representative BCE are summarized as follows:

- (i) The Representative BCE must be a Bermuda Constituent Entity.
- (ii) The Representative BCE must have a company or partnership number issued by the Registrar
- (iii) All Bermuda Constituent Entities of an In Scope MNE Group must select the same Representative BCE (and the same point(s) of contact for such Representative BCE).
- (iv) The Representative BCE does not need to be the ultimate parent entity or the Filing Bermuda Constituent Entity (as such term is defined in the CIT Act), nor is it required to be authorized to act on behalf of any Bermuda Constituent Entities.
- (v) Subject to the requirements above, the entity filing the annual declaration may designate itself as the Representative BCE.

Definitions

Key definitions relevant to the completion of Q1 – Q3 are summarized as follows:

Bermuda Constituent Entity A Bermuda Constituent Entity is:

- a Bermuda Tax Resident Entity, or
- a Bermuda Permanent Establishment

that is a constituent entity of an In Scope MNE Group.

Bermuda Tax Resident Entity An entity that is incorporated, formed or organised in Bermuda unless the entity is tax resident in another jurisdiction under the laws of that jurisdiction based on its location of management and control.

Bermuda Permanent Establishment A fixed place of business in Bermuda through which the business of an entity not otherwise incorporated or formed in Bermuda is wholly or partly carried on as determined in accordance with Article 5 of the OECD Model Tax Convention.



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